

1 David P. Morales, SBN 191229
THE MORALES LAW FIRM
2 900 E. Hamilton Avenue, Suite 100
Campbell, CA 95008
3 Telephone: (408) 850-2101
Facsimile: (866) 406-6080
4 dmorales@moraleslawfirm.com

5 Attorney for Defendants

6
7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 SAN JOSE DIVISION

10 Adobe Systems Inc.,

11 Plaintiff,

12 vs.
13

14 JACQUE OJADIDI aka JAQUE OJADIDI, an
individual and dba BUYBARGAINDEALS and
15 C WEB; XMICRO LLC; and DOES 1-10,
16 inclusive,

17 Defendant.
18
19

Civil Action No.: 5:10-CV-2388 LHK

**ANSWER TO COMPLAINT FOR
COPYRIGHT INFRINGEMENT AND
TRADEMARK INFRINGEMENT**

DEMAND FOR JURY TRIAL

20 **ANSWER TO COMPLAINT**

21 COMES NOW Defendants JACQUE OJADIDI (“Ojadidi”) and XMICRO LLC
22 (“XMicro”) (collectively, “Defendants”) and herewith answer the Complaint of Adobe Systems
23 Inc. (“Adobe” or “Plaintiff”) as follows:

24 1. Answering Paragraph 1 of the Complaint, Defendants are without sufficient knowledge
25 or information to form a belief as to the truth of the allegations contained in said paragraph, and
26 on that basis deny each and every allegation contained therein.

27 2. Answering Paragraph 2 of the Complaint, Defendants are without sufficient knowledge
28

**ANSWER TO COMPLAINT FOR COPYRIGHT INFRINGEMENT AND TRADEMARK
INFRINGEMENT**

1 or information to form a belief as to the truth of the allegations contained in said paragraph, and
2 on that basis deny each and every allegation contained therein.

3 3. Answering Paragraph 3 of the Complaint, Defendants are without sufficient knowledge
4 or information to form a belief as to the truth of the allegations contained in said paragraph, and
5 on that basis deny each and every allegation contained therein.

6 4. Answering Paragraph 4 of the Complaint, Defendants deny each and every allegation
7 contained therein.

8 5. Answering Paragraph 5 of the Complaint, Defendants admit that this Court has subject
9 matter jurisdiction.

10 6. Answering Paragraph 6 of the Complaint, Defendants are without sufficient knowledge
11 or information to form a belief as to the truth of the allegations contained in said paragraph, and
12 on that basis deny each and every allegation contained therein.

13 7. Answering Paragraph 7 of the Complaint, Defendants are without sufficient knowledge
14 or information to form a belief as to the truth of the allegations contained in said paragraph, and
15 on that basis deny each and every allegation contained therein.

16 8. Answering Paragraph 8 of the Complaint, Defendants are without sufficient knowledge
17 or information to form a belief as to the truth of the allegations contained in said paragraph, and
18 on that basis deny each and every allegation contained therein.

19 9. Answering Paragraph 9 of the Complaint, Defendants are without sufficient knowledge
20 or information to form a belief as to the truth of the allegations contained in said paragraph, and
21 on that basis deny each and every allegation contained therein.

22 10. Answering Paragraph 10 of the Complaint, Defendants are without sufficient knowledge
23 or information to form a belief as to the truth of the allegations contained in said paragraph, and
24 on that basis deny each and every allegation contained therein.

25 11. Answering Paragraph 11 of the Complaint, Defendants are without sufficient knowledge
26 or information to form a belief as to the truth of the allegations contained in said paragraph, and
27 on that basis deny each and every allegation contained therein.

1 12. Answering Paragraph 12 of the Complaint, Defendants admit the allegations contained in
2 the first and second sentences. Ojadidi admits that he does or has done business under the eBay
3 user IDs “cweb,” “xmicro,” “xmmicro,” “buybargaindeal,” www.xmmicro.com,
4 www.buybargaindeals.com, and www.xmicro.com. Ojadidi denies that he is doing business
5 under www.cweb.com. Defendants are without sufficient knowledge or information to form a
6 belief as to the truth of the remaining allegations contained in said paragraph, and on that basis
7 deny each and every remaining allegation contained therein.

8 13. Answering Paragraph 13 of the Complaint, Defendants deny each and every allegation
9 contained therein.

10 14. Answering Paragraph 14 of the Complaint, Defendants are without sufficient knowledge
11 or information to form a belief as to the truth of the allegations contained in said paragraph, and
12 on that basis deny each and every allegation contained therein.

13 15. Answering Paragraph 15 of the Complaint, Ojadidi admits that he sells products on eBay.
14 However, Defendants are without sufficient knowledge or information to form a belief as to the
15 truth of the remaining allegations contained in said paragraph, and on that basis deny each and
16 every remaining allegation contained therein.

17 16. Answering Paragraph 16 of the Complaint, Defendants admit that they have no formal
18 relationship with Plaintiff. However, Defendants deny making the alleged unauthorized copies
19 and contend that Ojadidi only purchased copies of the software from authorized Adobe re-sellers,
20 such as MacMall.com, PCMall.com and OnSale.com. Defendants are without sufficient
21 knowledge or information to form a belief as to the truth of the remaining allegations contained
22 in said paragraph, and on that basis deny each and every remaining allegation contained therein.

23 17. Answering Paragraph 17 of the Complaint, Ojadidi admits that official Adobe products
24 appear to display Adobe’s marks. Defendants are without sufficient knowledge or information
25 to form a belief as to the truth of the remaining allegations contained in said paragraph, and on
26 that basis deny each and every remaining allegation contained therein.

27 18. Answering Paragraph 18 of the Complaint, Defendants are without sufficient knowledge
28

**ANSWER TO COMPLAINT FOR COPYRIGHT INFRINGEMENT AND TRADEMARK
INFRINGEMENT**

Case No.: CV10-2388 LHK

1 or information to form a belief as to the truth of the remaining allegations contained in said
2 paragraph, and on that basis deny each and every remaining allegation contained therein.

3 19. Answering Paragraph 19 of the Complaint, Defendants are without sufficient knowledge
4 or information to form a belief as to the truth of the allegations contained in said paragraph, and
5 on that basis deny each and every allegation contained therein.

6 20. Defendants re-assert and hereby incorporate their previous responses to the identified
7 paragraphs.

8 21. Answering Paragraph 21 of the Complaint, Defendants deny each and every allegation
9 contained therein.

10 22. Answering Paragraph 22 of the Complaint, Defendants deny each and every allegation
11 contained therein.

12 23. Answering Paragraph 23 of the Complaint, Defendants deny each and every allegation
13 contained therein.

14 24. Answering Paragraph 24 of the Complaint, Defendants deny each and every allegation
15 contained therein.

16 25. Defendants re-assert and hereby incorporate their previous responses to the identified
17 paragraphs.

18 26. Answering Paragraph 26 of the Complaint, Defendants are without sufficient knowledge
19 or information to form a belief as to the truth of the allegations contained in said paragraph, and
20 on that basis deny each and every allegation contained therein.

21 27. Answering Paragraph 27 of the Complaint, Defendants deny each and every allegation
22 contained therein.

23 28. Answering Paragraph 28 of the Complaint, Defendants deny each and every allegation
24 contained therein.

25 29. Answering Paragraph 29 of the Complaint, Defendants are without sufficient knowledge
26 or information to form a belief as to the truth of the allegations contained in said paragraph, and
27 on that basis deny each and every allegation contained therein.

28 **ANSWER TO COMPLAINT FOR COPYRIGHT INFRINGEMENT AND TRADEMARK
INFRINGEMENT**

Case No.: CV10-2388 LHK

1 30. Answering Paragraph 30 of the Complaint, Defendants deny each and every allegation
2 contained therein.

3 **AFFIRMATIVE DEFENSES**

4 1. As and for a first separate and distinct affirmative defense to Plaintiff's Complaint, and
5 each and every cause of action thereof, Defendants allege that Plaintiff's Complaint fails to state
6 facts sufficient to constitute a cause of action against Defendants.

7 2. As and for a second separate and distinct affirmative defense to Plaintiff's Complaint,
8 and each and every cause of action thereof, Defendants allege that the claims are barred by the
9 applicable Statutes of Limitation.

10 3. As and for a third separate and distinct affirmative defense to the Complaint, and each
11 and every cause of action thereof, Defendants allege that the claims are barred by the Doctrine of
12 Laches.

13 4. As and for a fourth separate and distinct affirmative defense to Plaintiff's Complaint, and
14 each and every cause of action thereof, Defendants allege that the claims are barred by the
15 Doctrine of Waiver.

16 5. As and for a fifth separate and distinct affirmative defense to Plaintiff's Complaint, and
17 each and every cause of action thereof, Defendants allege that the claims are barred by the
18 Doctrine of Estoppel.

19 6. As and for a sixth separate and distinct affirmative defense to Plaintiff's Complaint, and
20 each and every cause of action thereof, Defendants allege that the claims are barred by the
21 Doctrine of Collateral Estoppel.

22 7. As and for a seventh separate and distinct affirmative defense to the Complaint, and each
23 and every cause of action thereof, Defendants allege that the claims are barred by the Statute of
24 Frauds.

25 8. As and for an eighth separate and distinct affirmative defense to the Complaint, and each
26 and every cause of action thereof, Defendants allege that Plaintiff failed to mitigate Plaintiff's
27 damages. The damages claimed by Plaintiff could have been mitigated by due diligence on
28

**ANSWER TO COMPLAINT FOR COPYRIGHT INFRINGEMENT AND TRADEMARK
INFRINGEMENT**

Case No.: CV10-2388 LHK

1 Plaintiff's part, or by one acting under similar circumstances. The failure to mitigate is a bar to
2 recovery under the Complaint.

3 9. As and for a ninth separate and distinct affirmative defense to the Complaint, and each
4 and every cause of action thereof, Defendants allege on information and belief that the sole and
5 proximate cause of the acts complained of by Plaintiff were due to the acts and/or omissions of
6 persons and entities other than Defendants.

7 10. As and for a tenth separate and distinct affirmative defense to the Complaint, and each
8 and every cause of action thereof, Defendants allege that their conduct was not the cause in fact,
9 or the proximate cause, of any of the losses alleged by Plaintiff.

10 11. As and for an eleventh separate and distinct affirmative defense to the Complaint, and
11 each and every cause of action thereof, Defendants allege that Plaintiff's claims are barred due to
12 Plaintiff's failure to join indispensable parties, including, without limitation, MacMall.com,
13 PCMall.com and OnSale.com.

14 12. As and for an twelfth separate and distinct affirmative defense to the Complaint, and each
15 and every cause of action thereof, Defendants allege that Plaintiff's claims are barred due to the
16 Doctrine of Misjoinder or Nonjoinder; for example, MacMall.com, PCMall.com and
17 OnSale.com are the proper parties to this action.

18 13. As and for a thirteenth separate and distinct affirmative defense to the Complaint, and
19 each and every cause of action thereof, Defendants allege that the claims are barred in whole or
20 in part by the privilege of fair competition.

21 14. As and for a fourteenth separate and distinct affirmative defense to the Complaint, and
22 each and every cause of action thereof, Defendants allege that Plaintiff's claims are barred by the
23 Doctrine of Consent.

24 15. As and for a fifteenth separate and distinct affirmative defense to the Complaint, and each
25 and every cause of action thereof, Defendants allege that Plaintiff's claims are barred by
26 Plaintiff's abandonment of its alleged rights, including under relevant contract rights, copyrights
27 and/or privacy rights.

28 **ANSWER TO COMPLAINT FOR COPYRIGHT INFRINGEMENT AND TRADEMARK
INFRINGEMENT**

Case No.: CV10-2388 LHK

1 16. As and for a sixteenth, separate and distinct affirmative defense to the Complaint, and
2 each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred due
3 to the fact that Plaintiff failed to contribute copyrightable subject matter to any of the alleged
4 infringed works.

5 17. As and for a seventeenth, separate and distinct affirmative defense to the Complaint, and
6 each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred due
7 to the fact that Plaintiff was not an author of the alleged infringed works.

8 18. As and for a eighteenth, separate and distinct affirmative defense to the Complaint, and
9 each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred by
10 the First Sale Doctrine.

11 19. As and for an nineteenth separate and distinct affirmative defense to the Complaint, and
12 each and every cause of action thereof, Defendants allege that Plaintiff's claims are barred
13 because Defendants had an express and/or implied license to use the intellectual property in
14 which Plaintiff alleges to have rights.

15 20. As and for a twentieth, separate and distinct affirmative defense to the Complaint, and
16 each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred due
17 to the Doctrine of Copyright Misuse.

18 21. As and for a twenty-first, separate and distinct affirmative defense to the Complaint, and
19 each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred by
20 the First Sale Doctrine.

21 22. As and for a twenty-second, separate and distinct affirmative defense to the Complaint,
22 and each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred
23 in whole or in part by the Doctrine of Innocent Infringement.

24 23. As and for a twenty-third separate and distinct affirmative defense to the Complaint, and
25 each and every cause of action thereof, Defendants allege that Plaintiff's claims are barred by
26 Plaintiff's lack of standing to sue.

27 24. As and for a twenty-fourth separate and distinct affirmative defense to the Complaint, and
28

**ANSWER TO COMPLAINT FOR COPYRIGHT INFRINGEMENT AND TRADEMARK
INFRINGEMENT**

Case No.: CV10-2388 LHK

1 each and every cause of action thereof, Defendants allege that Plaintiff's claims are barred by the
2 Doctrine of Acquiescence.

3 25. As and for a twenty-fifth separate and distinct affirmative defense to the Complaint, and
4 each and every cause of action thereof, Defendants allege that Plaintiff's claims are barred by the
5 Doctrine of Fair Use.

6 26. As and for a twenty-sixth, separate and distinct affirmative defense to the Complaint, and
7 each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred by a
8 defect in the copyright registration(s).

9 27. As and for a twenty-seventh, separate and distinct affirmative defense to the Complaint,
10 and each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred
11 by a defect in the trademark registration(s).

12 28. As and for a twenty-eighth, separate and distinct affirmative defense to the Complaint,
13 and each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred
14 due to Plaintiff's failure to register, or to timely register, the alleged copyrights.

15 29. As and for a twenty-ninth, separate and distinct affirmative defense to the Complaint, and
16 each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred due
17 to Plaintiff's failure to register, or to timely register, the alleged trademarks.

18 30. As and for a thirtieth, separate and distinct affirmative defense to the Complaint, and each
19 and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred by the
20 Forum Non Conveniens Doctrine.

21 31. As and for a thirty-first, separate and distinct affirmative defense to the Complaint, and
22 each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred due
23 to improper, or the omission of, copyright notice.

24 32. As and for a thirty-second separate and distinct affirmative defense to the Complaint, and
25 each and every cause of action thereof, Defendants allege that Plaintiff's claims are barred by the
26 Doctrine of Unjust Enrichment.

27 33. As and for a thirty-third, separate and distinct affirmative defense to the Complaint, and
28

**ANSWER TO COMPLAINT FOR COPYRIGHT INFRINGEMENT AND TRADEMARK
INFRINGEMENT**

Case No.: CV10-2388 LHK

1 each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred by
2 the First Amendment to the U.S. Constitution.

3 WHEREFORE, these answering Defendants pray for judgment as follows:

- 4 1. That Plaintiff takes nothing by the Complaint;
5 2. For reasonable attorney's fees and costs of suit incurred herein; and
6 3. For such other and further relief as the Court deems just and proper.

7 Dated: September 9, 2010

THE MORALES LAW FIRM

8
9 

10 _____
David P. Morales,
11 Attorney for Defendants
12

13 **JURY TRIAL DEMAND**

14 Defendants hereby demand a jury trial as provided by Rule 38(a) of the Federal Rules of
15 Court.

16 Dated: September 9, 2010

THE MORALES LAW FIRM

17
18 

19 _____
David P. Morales,
20 Attorney for Defendants
21
22
23
24
25
26
27
28